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Supreme Court, U.S.
FILED
DEC 23 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

LYNDA CASSIDY TAYLOR LOGEMANN,
INDIVIDUALLY AND AS TRUSTEE OF
THE McCARTY RANCH TRUST,
Appellant,

v.

ROBERT F. CRAIG, TRUSTEE OF
CASSIDY LAND AND CATTLE COMPANY
INC.,
Appellee.

ON APPEAL FROM THE
SUPREME COURT OF NEBRASKA

JURISDICTIONAL STATEMENT

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DECEMBER, 1987.

QUESTION PRESENTED

The question presented in this case is:

> Whether the State of Nebraska has sovereign jurisdiction only to do mortgage foreclosures, or whether, in the alternative, the United States Bankruptcy Court has jurisdiction to do mortgage foreclosures, while the Appellee (Debtor) is in a Chapter Eleven Reorganization in bankruptcy.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	ii
Opinion Below	1
Jurisdiction	2
Statutory Provisions Involved	3
Statement	3
The Question Is Substantial	8
Conclusion	10
Appendix A	12
Appendix B	16

TABLE OF AUTHORITIES

Cases:

Butner v. United States, 440 U.S. 48, 99 S. Ct. 914	2
Northern Pipeline Construction Company v. Marathon Pipeline Company, 458 U.S. 50, 102 S. Ct. 2858	9
People of State of New York, ex rel. Bryant v. Zimmerman, 278 U.S. 63, 49 S. Ct. 61	2
Street v. New York, 394 U.S. 576, 89 S. Ct. 1354	2
Webb v. Webb, 451 U.S. 493, 101 S.Ct. 1889	2

Statutes:

28 U.S.C. Section 157(b)(2)	3
28 U.S.C. Section 1257(2)	5
Nebraska Revised Statute, Section 25-2137	3

Miscellaneous:

Bankrupty Amendments and Federal Judgeship Act of 1984	3

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ON APPEAL FROM THE
SUPREME COURT OF NEBRASKA

JURISDICTIONAL STATEMENT

OPINION BELOW

The September 25, 1987 opinion of the Supreme Court of Nebraska is officially reported at 412 NW 2d 857 and at 226 Nebraska Reports 587.

The official opinion appears as Appendix A, *infra*, 13, to this jurisdictional statement.

JURISDICTION

This is an appeal from a final judgment entered pursuant to the decision of the Supreme Court of Nebraska holding that the United States Bankruptcy Court has jurisdiction to entertain and decide an action in mortgage foreclosure while the Appellee-Debtor is in a Chapter Eleven reorganization in bankruptcy.

In her *Answer, Affirmative Defenses and Counterclaim* and throughout the proceedings in State Court, at the trial and appellate levels, Appellant drew into question the validity of a Nebraska statute, namely, Nebraska Revised Statute, Section 25-2137 on the ground of its repugnance to the Constitution and Laws of the United States, specifically 28 U.S.C. Section 157(b)(2).

Judgment was deemed to have been entered on September 25, 1987, when the decision of the court below was docketed by the Clerk of the Supreme Court of Nebraska.

A Notice of Appeal was filed with the Clerk of that court on November 16, 1987.

This Court has jurisdiction of this appeal by virtue of 28 U.S.C. Section 1257(2).

The cases which sustain jurisdiction are:

People of State of New York, ex. rel. Bryant v. Zimmerman (1928) 278 U.S. 63, 49 S.Ct. 61

Street v. New York (1969) 394 U.S. 576, 89 S.Ct. 1354

Butner v. United States (1979) 440 U.S. 48, 99 S.Ct. 914

Webb v. Webb (1981) 451 U.S. 493, 101 S.Ct. 1889

Northern Pipeline Construction Company v. Marathon Pipeline Company (1982) 458 U.S. 50, 102 S.Ct. 2858

STATUTORY PROVISIONS INVOLVED

28 U.S.C. Section 157(b)(2) provides, in relevant part:

> "Core proceedings include, but are not limited to-
> (A) matters concerning the administration of the estate;----------
> (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship,----------."

The pertinent portion of the challenged State statute, Nebraska Revised Statute, Section 25-2137 (Reissue of 1985), reads as follows:

> "All petitions for the foreclosure or satisfaction of mortgages shall be filed in the district court where the mortgaged premises are situated."

STATEMENT

This case involves the question whether State Courts or Federal Bankruptcy Courts have jurisdiction to do mortgage foreclosures of privately owned State patented lands, while the Appellee (Debtor) is in a Chapter Eleven Bankruptcy Reorganization.

A parallel case first arose in 1984 and 1985 in the United States Bankruptcy Court for the District of Nebraska pursuant to the Congressional response and ensuing Act known as the *Bankruptcy Amendments and Federal*

Judgeship Act of 1984, and more specifically to the instant problem at hand, the "core proceedings" statute cited in 28 U.S.C. Section 157(b)(2).

In that case, the bankruptcy Court held that it had jurisdiction to foreclose more than 12,000 acres of Appellant's ranch land giving title to the same to the Appellee. The Appellant made objection to the bankruptcy Court's jurisdiction to foreclose and has carried the case all the way to the United States Court of Appeals for the Eighth Circuit. The case was submitted to the Court of Appeals on September 4, 1987, where it is pending.

This case now on appeal to this Court arose in the trial Court of the State of Nebraska, when the Appellee brought a quiet title action to clean the title of the existing clouds, defects and encumbrances upon it.

In the quiet title phase of this case in the Nebraska trial Court, the Appellant repeatedly raised the issue and the underlying proposition that the United States Bankruptcy Court had no jurisdiction to do a mortgage foreclosure; therefore, Appellee's title obtained by foreclosure in the bankruptcy Court was void and inefficacious; consequently, Appellee had no claim of title to assert a quiet title cause of action in State Court against the Appellant.

The theory of the Appellant arose pursuant to 28 U.S.C. Section 157(b)(2) reasoning that mortgage foreclosures had to be done in State Court pursuant to Nebraska Revised Statute, Section 25-2137 (Reissue of 1985).

The question and proposition was raised in the Nebraska trial Court (the court of first instance) in the quiet title action by way of Appellant's *Answer, Affirmative Defenses and Counterclaim*.

Thus, the Appellant raised the federal question in the following manner:

On p. 4 of *Affirmative Defenses*, Appellant alleged:

"Plaintiff (Appellee herein) claims he obtained legal title to the real property in Exhibit A by a mortgage foreclosure in the U.S. Bankruptcy Court. However, said bankruptcy Court does not have subject matter jurisdiction to do mortgage foreclosures pursuant to 28 U.S.C. Section 157(b)(2)—only State Courts have such jurisdiction. Consequently, Plaintiff's title to the said real property in Exhibit A is null and void."

On p. 6 of *Affirmative Defenses*, Appellant alleged:

"At paragraphs 22. and 23. of the Petition it alleges that Plaintiff obtained his "purported" title to the real property in Exhibit A by judgment of mortgage foreclosure on March 12, 1985 in the U.S. Bankruptcy Court. This was in derogation of the Nebraska Revised Statute, Section 25-2137, which states that:

> "All petitions for the foreclosure— of mortgages *shall* be filed in the district court where the mortgaged premises are situated."

Consequently, this Nebraska State Court does not have to recognize the title of the Plaintiff to the real property in Exhibit A obtained by mortgage foreclosure in the U.S. Bankruptcy Court."

On p. 8 of *Counterclaim*, Appellant alleged:

"The Congress of the United States of America, upon the advice of the mandate of the Supreme Court of the United States of America in *Northern Pipeline*

Construction Company v. Marathon Pipeline Company (1982) 458 U.S. 50, 102 S.Ct. 2858, did not give U.S. Bankruptcy Courts power and jurisdiction to do mortgage foreclosures of deeded lands. Therefore, it is obvious that Plaintiff's (Appellee herein) claim and cause of action in his Petition is void, invalid, and without merit."

"Further, Plaintiff's mortgage foreclosure done in the bankruptcy Court was done in derogation of 28 U.S.C. Section 157(b)(2)----no subject matter jurisdiction---- and also in derogation of the laws of the State of Nebraska, more particularly, Neb. Rev. Stat. Section 25-2137, which states that:

> "All petitions for the foreclosure----of mortgages *shall* be filed in the district Court where the mortgaged premises are situated."

The case went to Decree in the Nebraska trial Court, quieting title in the Appellee by granting Appellee's Motion for Summary Judgment. The Court passed upon the question raised as to jurisdiction by overruling Appellant's arguments and evidence, and overruling Appellant's *Counterclaim and Affirmative Defenses.*

The Appellee brought up the claim of the validity of Nebraska Revised Statute, Section 25-2137 in its *Reply* to Appellant's *Counterclaim* by a general denial and thus drew into question the theory of repugnance to the laws of the United States.

From this Decree, the Appellant appealed to the Supreme Court of Nebraska. The question presented as to jurisdiction on appeal to that Court was the same as

raised in the pleadings in the Nebraska trial Court.

The jurisdictional question in the Supreme Court of Nebraska was raised by way of an assignment of error, by the briefs and arguments of both parties, and which is the sole method of doing so.

The pleadings raising the federal question were part of the record before the Supreme Court of Nebraska.

Both parties contested and defended the validity of Nebraska Revised Statute, Section 25-2137 in their briefs.

The theory of repugnance was further drawn into question in Appellee's brief in the Supreme Court of Nebraska when it denied the applicability of Nebraska Revised Statute, Section 25-2137, while affirming the applicability of 28 U.S.C. Section 157(b)(2) and its "core provisions" to the case.

Contrariwise, the Appellant in her brief continually affirmed the applicability of Nebraska Revised Statute, Section 25-2137 to the case.

In Appellant's *Pre-Conference Hearing Statement* in the Supreme Court of Nebraska, she stated the issue to be:

> "Should the (trial) Court have quieted title to the lands in the Defendant (Appellant herein)?

Appellant quickly added that the underlying issue was:

> "Does the State of Nebraska have sovereign jurisdiction only to do mortgage foreclosures?

The Supreme Court of Nebraska specifically decided against Appellant on the jurisdictional issue now presented to this Court on appeal by holding that the bankruptcy Court has jurisdiction to entertain mortgage foreclosures of real property.

Nebraska Revised Statute, Section 25-2137 mandates that a mortgage foreclosure can only be done in the (State) district court of the county where the land is located. Appellant sought to enforce this statute in the quiet title proceedings.

The Supreme Court of Nebraska, in its opinion, expressly recognized that the case presented the dichotomy of applying the issue of Federal bankruptcy law or State law (even though it did not mention Nebraska Revised Statute, Section 25-2137 by name).

However, the clear expression left by the opinion was, that where there is a conflict or repugnance with Federal law and State law, Federal law would be controlling.

The Court below clearly held that bankruptcy Courts could do mortgage foreclosures.

Thus, the Supreme Court of Nebraska sustained the State statute, Nebraska Revised Statute, Section 25-2137 against the claim of invalidity under the Federal Constitution and laws in indirect terms and this was sufficient if the necessary effect of the judgment was to affirm the claim of validity. *People of State of New York, ex rel. Bryant v. Zimmerman,* (1928) 278 U.S. 63, 49 S.Ct. 61.

Finally, we can conclude that the claim of invalidity by reason of Nebraska Revised Statute, Section 25-2137 being repugnant to the Federal laws (and Constitution) was

presented to the Supreme Court of Nebraska and that by its decision, the statute, Nebraska Revised Statute, Section 25-2137, was upheld against that claim. Thus, the repugnance was created with Federal law necessary for it to be brought within the ambit of 28 U.S.C. Section 1257(2).

THE QUESTION IS SUBSTANTIAL

The question presented on this appeal has never been passed upon by this Court.

Basically, the same question herein, is now pending before the United States Court of Appeals for the Eighth Circuit, on Appellant's appeal from the United States Bankruptcy Court. While the appeal is pending in the Court of Appeals, this Court can take and does have jurisdiction of the same basic and underlying question, because this question arises from State Court proceedings and will determine whether or not the Supreme Court of Nebraska did the right thing when it ruled in favor of quieting title in the Appellee.

This is the first case to arise under the *Bankruptcy Amendments and Federal Judgeship Act of 1984,* which attempts to define the constitutional and jurisdictional limitations and aspects of an Article I. Court, prescribed by this Court in *Northern Pipeline Construction Company v. Marathon Pipeline Company* (1982) 458 U.S. 50, 102 S.Ct. 2858.

This case is, perhaps, the first real test of the foregoing Congressional Act as to whether it comports with this Court's decision in *Marathon,* or whether this Act will be held to be constitutionally and jurisdictionally defective.

If it is held to be defective still, then the Congress will

have to re-do the law to make it comply with *Marathon* and the United States Constitution.

This is the time to test this Act, by applying the fundamental issue of whether State Courts or Federal Bankruptcy Courts have jurisdiction to do mortgage foreclosures of real estate as was done in the Courts below.

This case will determine whether the State Courts will retain their historical jurisdiction given to them by the United States Constitution to do mortgage foreclosures, and other equitable and common law actions in their own Courts.

Lastly, this case will serve as a prelude to another collateral question, which casts a ghostly spectre on all that is done in the bankruptcy Court: Can a bankruptcy Court, an Article I. Court, constitutionally take, sell off and liquidate one's property, which only an Article III. Court can do, within the proscriptions of the United States Constitution? Certainly, this question, waits for the approrpriate future time.

CONCLUSION

This Court should note probable jurisdiction. This appeal presents a substantial question of public importance.

If the question of appeal jurisdiction is doubtful, the Appellant might expressly request that the papers be considered a *Petition for Certiorari* if appeal jurisdiction is not found.

Respectfully submitted,

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Attorney for Appellant

APPENDIX A

Opinon of the Supreme Court of Nebraska

* * *

APPENDIX B

Notice of Appeal

APPENDIX A

226 Neb. 587

Robert F. CRAIG, Trustee of Cassidy Land & Cattle Company, Inc., Appellee,

v.

Lynda Cassidy Taylor LOGEMANN, Individually and as Trustee of the McCarty Ranch Trust, Appellant,

William Logemann, Individually and doing business as W.S. Cattle Company, et al., Appellees.

No. 87-451.

Supreme Court of Nebraska

Sept. 25, 1987.

Quiet title action was brought. The District Court, Garfield County, Ronald D. Olberding, J., quieted title, and defendant appealed. The Supreme Court, White, J., held that Bankruptcy Court had jurisdiction to entertain action for, and to foreclose, a real estate mortgage.

Affirmed.

1. Bankruptcy Key #293(1)

Bankruptcy court had jurisdiction to entertain an action for, and to foreclose, a real estate mortgage.

2. Courts Key #489(1)

In all cases of apparent conflict between state and federal courts, the latter are exclusive judges over their jurisdiction of subject of action. U.S.C.A. Const. Art. 1, § 8; Amend. 6.

Syallabus by the Court

Constitutional Law: Courts: Jurisdiction. In all cases of apparent conflict between the state and federal courts, the latter are the exclusive judges over their jurisdiction of the subject of the action.

William J. Rieb, Sioux City, Iowa, for appellant.

David D. Begley of Kennedy, Holland, DeLacy & Svoboda, Omaha, for appellee Craig.

HASTINGS, C.J., BOSLAUGH, WHITE, CAPORALE, SHANAHAN, and GRANT, JJ., and COLWELL, District Judge, Retired.

WHITE, Justice.

This is an appeal from an order of the district court for Garfield County quieting title to a tract of land in Garfield County, Nebraska. The plaintiff below purchased the land at a foreclosure sale pursuant to proceedings conducted in the U.S. Bankruptcy Court for the District of Nebraska.

The factual situation is not complicated. Cassidy Land & Cattle Company, Inc., owned a 12,000-acre ranch, encumbered by a first mortgage in favor of Businessmen's Assurance Company. Severe financial difficulties arose in the operation of the ranch, resulting in large operating losses. Cassidy Land & Cattle Company conveyed the ranch to McCarty Ranch Trust and carried back a mortgage in excess of $2 million. Cassidy Land & Cattle Company was declared bankrupt by virtue of a petition filed in the bankruptcy court. Thereafter, the trustee filed an action to foreclosure the mortgage in the U.S. District Court for the District of Nebraska. The action was referred to the bankruptcy court by the U.S. District Court.

At the foreclosure sale the bankruptcy trustee purchased the land. The sale was confirmed on August 19, 1986. At this point a number of documents had been filed in the office of the register of deeds in Garfield County sufficient, in the judgment of the trustee, to create a cloud on the trustee's title. The trial court sustained the trustee's motions for summary judgment, and the defendant Lynda Cassidy Taylor Logemann, individually and as trustee for McCarty Ranch Trust, appeals.

[1] A number of issues are raised, but throughout this action only one question is presented: Does the bankruptcy court have jurisdiction to entertain an action for, and to foreclose, a real estate mortgage?

We first recognize that the U.S. Constitution and laws made pursuant to its authority are the supreme law of the land and that conflicting state laws cannot interfere with the operation of federal law. U.S. Const. art. VI.

The U.S. Constitution provides "The Congress shall have Power...[t]o establish ... uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art, I, § 8. The U.S. Bankruptcy Court and the

U.S. District Court for the District of Nebraska have determined that the bankruptcy court had jurisdiction to entertain the foreclosure proceedings.

(2) As this court said in *Fitzgerald v. Fitzgerald & Mallory Construction Co.*, 44 Neb. 463, 495, 62 N.W. 899, 910 (1895), "It is a sufficient answer that in all cases of apparent conflict between the state and federal courts the latter are the exclusive judges of their jurisdiction over the subject of the action. (*Freeman v. Howe*, 24 How. [65 U.S.], 459.)"

The judgment of the district court is accordingly affirmed.

Affirmed

APPENDIX B

IN THE SUPREME COURT OF THE
STATE OF NEBRASKA

Lynda Cassidy Taylor Logemann,
Individually and as Trustee of
the McCarty Ranch Trust,
Appellant,

Case No. 87-451

RECEIVED
NOV. 16. 1987
SUPREME COURT OF NEBRASKA

Filed on 11-19-87
/s/ Martin P. Robbins
CLERK OF THE DISTRICT COURT

v.

Robert F. Craig, Trustee of
Cassidy Land & Cattle Company, Inc.,
Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Lynda Cassidy Taylor Logemann, individually and as Trustee of the McCarty Ranch Trust, the appellant above named, hereby appeals to the Supreme Court of the United States from the final Judgment of the Supreme Court of Nebraska, which affirmed a Decree Quieting Title entered in this action on September 25, 1987.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

Dated: November 13, 1987.

Respectfully submitted,

/s/ William J. Rieb
P.O. Box 1682
Sioux City, Iowa 51102
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Attorney for Lynda Cassidy
Taylor Logemann, individually
and as Trustee of the McCarty
Ranch Trust.

CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of the Supreme Court of the United States, hereby certifies that he mailed a true and correct copy of *Notice of Appeal to the Supreme Court of the United States*, upon the only party required to be served, namely, the Appellee, Robert F. Craig, Trustee of Cassidy Land & Cattle Company, Inc., by serving his attorney of record, namely, Mr. David Begley, Esq., 10306 Regency Parkway Drive, Omaha, Nebraska 68114, on the 13th day of November, 1987, by depositing the same in the U.S. Mails, at the U.S. Post Office in Sioux City, Iowa, with postage thereon prepaid.

Dated: November 13th, 1987.

/s/ William J. Rieb

* Pursuant to Supreme Court Rule No. 28.5:

List of Name and Address of Only Party to be Served:

Mr. Robert F. Craig, Esq.
Trustee, Cassidy Land & Cattle Company, Inc.
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Supreme Court, U.S.
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CLERK

No. 87-1060

In The

Supreme Court of the United States

October Term, 1987

LYNDA CASSIDY TAYLOR LOGEMANN,
INDIVIDUALLY AND AS TRUSTEE OF
THE McCARTY RANCH TRUST,

v. *Appellant,*

ROBERT F. CRAIG, TRUSTEE OF
CASSIDY LAND & CATTLE COMPANY, INC.,

Appellee.

**ON APPEAL FROM THE
SUPREME COURT OF NEBRASKA**

MOTION OF APPELLEE TO DISMISS OR AFFIRM

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QUESTION PRESENTED

Does this Court have appellate jurisdiction under 28 U.S.C. § 1257(2) to accept for decision a case appealed from the highest court of a state when the validity of a state statute has not been decided?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINION BELOW 2

STATEMENT OF THE CASE 2

ARGUMENT 3

1. The appeal of the decision below is not within the Court's jurisdiction under 28 U.S.C. § 1257(2). 3

CONCLUSION 6

TABLE OF AUTHORITIES

Page

CASES:

Craig v. Logemann, 226 Neb. 587, 412 N.W.2d 857 (1987) 2, 5

Craig v. McCarty Ranch Trust, 69 B.R. 649 (D. Neb. 1987) 3

Craig v. McCarty Ranch Trust, No. 87-1181 (8th Cir. January 12, 1988) 3

Donovan v. Dallas, 377 U.S. 408 (1964) 5

Freeman v. Howe, 65 U.S. (24 How.) 450 (1861) 2, 4, 5

Kline v. Burke Construction Co., 260 U.S. 226 (1922) 5

Penn General Casualty Co. v. Pennsylvania, 294 U.S. 189 (1935) 5

Princess Lida v. Thompson, 305 U.S. 456 (1939) 5

STATUTES:

Neb. Rev. Stat. § 25-2137 (Reissue 1985) 3

28 U.S.C. § 1257(2) 1, 3, 4

TREATISES:

20 Am. Jur. 2d *Courts* § 128 5

21 C.J.S. *Courts* § 529 5

16 C. Wright, A. Miller, E. Cooper & E. Gressman, *Federal Practice and Procedure: Jurisdiction* § 4012 (1977) 4

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LYNDA CASSIDY TAYLOR LOGEMANN,
INDIVIDUALLY AND AS TRUSTEE OF
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v.

ROBERT F. CRAIG, TRUSTEE OF
CASSIDY LAND & CATTLE COMPANY, INC.,

Appellee.

**ON APPEAL FROM THE
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MOTION OF APPELLEE TO DISMISS OR AFFIRM

The appellee Robert F. Craig moves the Court to dismiss the appeal or, in the alternative, to affirm the judgment of the Nebraska Supreme Court without further argument on the ground that the Court is without jurisdiction. While appellant asserts jurisdiction under 28 U.S.C. § 1257(2), which supports jurisdiction to

review cases upholding the constitutionality of challenged state statutes, a review of the lower courts decision makes it clear that this case has never involved any issue concerning the constitutionality of a state statute.

OPINION BELOW

The opinion of the Nebraska Supreme Court is reported at 226 Neb. 587, 412 N.W.2d 857 (1987) and is reprinted in appellant's Appendix A of her jurisdictional statement.

STATEMENT OF THE CASE

The appellant's jurisdictional statement misstates the holding of the Nebraska Supreme Court in *Craig v. Logemann*, 226 Neb. 587, 412 N.W. 2d 857 (1987). In *Craig* the Nebraska Supreme Court simply held that state courts will not permit relitigation on the issue of whether a federal court had jurisdiction to decide a case. The Nebraska Supreme Court stated, "It is a sufficient answer that in all cases of apparent conflict between the state and federal courts the latter are the exclusive judges of their jurisdiction over the subject of the action. (*Freeman v. Howe*, 24 How. [65 U.S.], 459.)" 226 Neb. at 589, 412 N.W.2d at 858. The holding was consistent with the limited–if not nonexistent–ability of a state court to review the decision of a federal court.

The trial court's order in this case quieted title to real property in the appellee which he had obtained in

a federal court mortgage foreclosure action. The United States Bankruptcy Court and the United States District Court for the District of Nebraska had held that the Bankruptcy Court had jurisdiction to conduct the mortgage foreclosure action. *Craig v. McCarty Ranch Trust,* 69 B.R. 649 (D. Neb. 1987). That decision has recently been affirmed by the Eighth Circuit Court of Appeals. *Craig v. McCarty Ranch Trust,* No. 87-1181 (8th Cir. January 12, 1988).

When this quiet title action was subsequently filed in the state district court, appellant attempted to again challenge the federal court's jurisdiction to conduct the mortgage foreclosure action. That challenge was rejected by both the state trial and appellate courts.

At no time prior to the filing of appellant's jurisdictional statement has any challenge been lodged dealing with the constitutionality of any state statute. Consequently, there was no opportunity for either court to uphold a state statute's constitutionality when challenged by federal law.

ARGUMENT

The appeal of the decision below is not within the Court's jurisdiction under 28 U.S.C. 1257(2).

In the trial and appeal below appellant argued that state law requires all mortgage foreclosures to be conducted in the state district court where the land is located. Neb. Rev. Stat. § 25-2137 (Reissue 1985) Therefore, the bankruptcy court had no jurisdiction to entertain mortgage foreclosure actions. Jurisdictional Statement of Appellant at 4, 5.

At no time had the appellant drawn into question the validity of a state statute as being repugnant to the Constitution, treaties or laws of the United States as required by 28 U.S.C. § 1257(2). The requirement of 28 U.S.C. § 1257 that a state statute must be "drawn into question" has been interpreted to mean:

> First, the state court must have acted upon the strong influence, if not the command, of the statute. Second, the court must have taken its own action or approved other official action against a protest that federal law prohibits reliance on the statute to achieve the consequences that result to that litigant.

16 C. Wright, A. Miller, E. Cooper & E. Gressman, *Federal Practice and Procedure: Jurisdiction* § 4012 (1977). The appellant has not met either prong of the test.

The Nebraska Supreme Court's decision in *Craig* was entirely based on well established rules of federalism and not upon any state statute or federal law. The principle relied upon was first annunciated in *Freeman v. Howe*, 65 U.S. (24 How.) 450 (1861). "[I]t belongs to the Federal courts to determine the question of their own jurisdiction, the ultimate arbiter, the supreme judicial tribunal of the nation. . . ." 65 U.S. at 459. Observance of this rule is critical for the efficient functioning of our federal system. As this Court observed in *Freeman* a contrary rule would mean,

> [I]n every case the question of jurisdiction could be made; and until the power was assumed by the state court, and the question of jurisdiction of the Federal court was heard and determined by it, it could not be known whether in the given case it existed or not. We need scarcely remark that no

> government could maintain the administration or execution of its laws, civil or criminal, if the jurisdiction of its judicial tribunals were subject to the determination of another. *Id.*

The evil cautioned against in *Freeman* is exactly the tactic adopted by the appellant, which was rejected by the Nebraska courts.

In another context, an adjunct to the rule of *Freeman v. Howe* was stated in *Donovan v. Dallas*, 377 U.S. 408, 412 (1964) as follows, "Early in the history of our country a general rule was established that state and federal courts would not interfere with or try to restrain each other's proceedings." Relitigating a federal-court's jurisdiction in every state court proceeding amounts to, in essence, interference in the federal judicial system's operation.

In addition to the federalism principles annunciated in *Freeman v. Howe*, the state court decision in *Craig v. Logemann* can be viewed as being based in the priority principle. 20 Am. Jur. 2d *Courts* § 128; 21 C.J.S. *Courts* § 529. As applied to in rem actions such as mortgage foreclosures, the court which first assumes jurisdiction has exclusive jurisdiction until completion of the case. Since the court first acquiring jurisdiction cannot be interfered with by a later reviewing court, the first court is the exclusive judge of its own jurisdiction. The priority principle is followed by this Court. *Princess Lida v. Thompson*, 305 U.S. 456, 466 (1939); *Penn General Casualty Co. v. Pennsylvania*, 294 U.S. 189, 195 (1935); *Kline v. Burke Construction Co.*, 260 U.S. 226, 235 (1922). As this Court stated in *Kline* this rule is one of "right and of law, based upon necessity." 260 U.S. at 235.

The underlying state court case was decided upon concepts of federalism or the priority principle; neither decisional basis subject to this Court's review.

CONCLUSION

It is manifestly clear that the appellant's case is not within the jurisdictional review of this court. Appellant's argument for jurisdiction is so far wrong that it represents a form of legal reasoning dyslexia. For the foregoing reasons the appellee respectfully moves that this appeal be dismissed or affirmed.

Respectfully submitted,

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February, 1988

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QUESTION PRESENTED

Whether the State of Nebraska has sovereign jurisdiction only to do mortgage foreclosures, or whether, in the alternative, the United States Bankruptcy Court has jurisdiction to do mortgage foreclosures, while the Appellee (Debtor) is in a Chapter Eleven Reorganization in Bankruptcy.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i
TABLE OF CONTENTS ii
TABLE OF AUTHORITIES iii
OPINION BELOW 1
JURISDICTION 1
STATUTORY PROVISIONS INVOLVED 1
STATEMENT 1
THE QUESTION IS SUBSTANTIAL 1
ARGUMENT 2
CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES:

Northern Pipeline Construction Company v. Marathon Pipeline Company (1982) 458 U.S. 50 ..... 4, 6

People of State of New York ex rel. Bryant v. Zimmerman (1928) 278 U.S. 63 7

Wilson v. Cook (1946) 327 U.S. 474 3

ACTS:

The Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353) 3, 6

STATUTES AND RULES:

Supreme Court Rule 16.1(b) 7

28 U.S.C. § 157(b)(2) 2, 3, 4, 5, 6

28 U.S.C. § 1257(2) 2, 5, 6

28 U.S.C. § 1257(3) 7

Neb. Rev. Stat. § 25-2137 (Reissue 1985) 2, 3, 4, 5, 6

TREATISES:

Black's Law Dictionary 3

Nebraska Practice Methods and Forms, § 807 4

OPINION BELOW

See Appellant's *Jurisdictional Statement* at p. 1 and *Appendix* A at p. 13.

JURISDICTION

See Appellant's *Jurisdictional Statement* at pgs. 2 and 3.

STATUTORY PROVISIONS INVOLVED

See Appellant's *Jurisdictional Statement* at p. 3.

STATEMENT

See Appellant's *Jurisdictional Statement* at pgs. 3 through 9.

THE QUESTION IS SUBSTANTIAL

See Appellant's *Jurisdictional Statement* at pgs. 9 and 10.

ARGUMENT

Without getting into the merits of the case and laying the constitutionality of Neb. Rev. Stat. § 25-2137 (Reissue 1985), (hereinafter referred to as 25-2137), aside,[1] Appellant is merely appealing the applicability of 28 U.S.C. § 157(b)(2) to the case at bar.

To appeal to this Court, the Appellant utilized 28 U.S.C. § 1257(2), which reads, in pertinent part, as follows:

> " . . .where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, *or* laws of the United States and the decision is in favor of its validity."

The statute above is plainly written in the disjunctive term, *or.*

The appellant appealed under the "repugnancy to the laws of the United States".

The federal question sought to be reviewed in this case was very meticulously raised in the Nebraska Trial Court. In her *Counterclaim* (Appellant's *Jurisdictional Statement* at pgs. 5 and 6), Appellant squarely presented the trial court with the federal question which drew into question the validity of a state statute

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[1] When 25-2137 challenged the applicability of 28 U.S.C. § 157(b)(2) to the case, it was in the very least, naturally *implicit* that the Courts of Nebraska would decide this case on the *Supremacy Clause* (U.S. Constitution, *Article VI*) grounds. This implicitly then called into question the *Supremacy Clause* issue of the *unconstitutional application* of 25-2137 to the case at bar.

on the ground of it being repugnant to the laws of the United States.

The case below pitted the validity of 28 U.S.C. § 157(b)(2) as construed and applied, against and opposed to the validity of the Nebraska state statute 25-2137 as construed and its application to this case. *Wilson v. Cook* (1946) 327 U.S. 474. Repugnancy to the laws of the United States implies which statute, state or federal, is to rule sovereign and supreme, in relation to its application to the case.

Black's Law Dictionary describes the word, *valid*, as:

> "Of binding force; legally sufficient or efficacious; authorized by law."

After Appellant's *Counterclaim* was lodged, which raised the application and construction of *either* 25-2137 or 28 U.S.C. § 157(b)(2) to the case, (Appellant's *Jurisdictional Statement* at pgs. 5 and 6), it was the Appellee himself who drew into question the validity of 25-2137 on the ground of its being repugnant to the laws of the United States, namely 28 U.S.C. § 157(b)(2).

The Appellee wanted to make certain this *Counterclaim* of the Appellant went nowhere, so he filed a *Reply* in which he asserted a *general denial* to the *Counterclaim* of the Appellant, generally denying the application of 25-2137 to the case, and of course, affirming his position of the applicability of 28 U.S.C. § 157(b)(2) to the case that bankruptcy courts have jurisdiction to do mortgage foreclosures within the purview of *The Bankruptcy Amendments and Federal*

Judgeship Act of 1984, (Public Law 98-353) codified into 28 U.S.C. § 157(b)(2), in part.

In Nebraska practice, a *general denial* puts in issue all the material averments and permits a party to prove any and all facts tending to negative any of those averments. The effect of the denial is to put the burden on the averring party to establish by evidence the matters denied. *Nebraska Practice Methods and Forms*, § 807.

Also of note, is the fact that Appellant in her *Counterclaim* raised the substantial federal question herein by asserting lack of subject matter jurisdiction of the bankruptcy court to do mortgage foreclosures in line with the mandate of the Supreme Court in *Northern Pipeline Construction Company v. Marathon Pipeline Company*, (1982) 458 U.S. 50. In this, this served under Nebraska practice, as a defense in abatement and bar. Even in the early initial stages of the case, Appellant raised the federal question by a *demurrer* to Appellee's Petition, which *demurrer* was overruled.

Certainly, Appellee overlooks the point that the validity of 25-2137 was called into question on the basis of the applicability of 25-2137 to the case. Involved in the applicability issue is the meaning or construction of the statute. Appellee said 25-2137 simply was not applicable because under his theory of construction 28 U.S.C. § 157(b)(2) applied. Contrariwise, Appellant from the beginning affirmed the applicability of 25-2137 to the case, under her theory of construction.

Appellant raised the issue and the Appellee joined the issue in his *Reply*. Appellant merely supplied the state statute and Appellee eagerly provided the impetus to create the repugnancy.

What more the Appellant could have done is the question.

In order to satisfy this Court's jurisdictional requirement under 28 U.S.C. § 1257(2), indeed, the application and construction of 25-2137 and 28 U.S.C. § 157(b)(2) is itself a federal question, even though the issue, "Does 25-2137 or 28 U.S.C. § 157(b)(2) apply?" reaches beyond this into the merits.

The Supreme Court of Nebraska, in its opinion, did not expressly mention 25-2137 or 28 U.S.C. § 157(b)(2), although both statutes were before that Court in the record and briefs brought up from the Nebraska Trial Court.

Certainly, the Supreme Court of Nebraska was fully apprised that the State Statute, 25-2137 was being assailed as invalid on federal grounds as it applied to the case. The federal grounds were 28 U.S.C. § 157(b)(2).

In broad and sweeping general terms, the Supreme Court of Nebraska was exceedingly careful not to "strike down" the validity of its own Statute on its face, while on the other hand, it implicitly upheld the application of 28 U.S.C. § 157(b)(2) to the case, characterizing the holding of the case upon *Supremacy Clause* grounds.

Further, consistent with the above, while both parties did contest and defend the applicability of each of their respective statutes to the case, the "heart" of 25-2137 itself, was "not striken down", on its face, as being unconstitutional.

The necessary effect, then, of the judgment and decision of the Supreme Court of Nebraska, was to uphold the validity of 25-2137, in indirect terms, and hold 25-2137 inapplicable. Being inapplicable, therefore, the efficacy of 25-2137 was rendered inoperative as applied to the specific facts of this case.

Codifying into this case a workable legal principle that brings this case within the proscriptions of 28 U.S.C. § 1257(2), it may be said that the Nebraska Courts merely "struck down" and *invalidated the application* of 25-2137 as being *unconstitutionally applied* by its terms to the case at hand pursuant to the *Supremacy Clause,* while 25-2137 *itself* was held constitutionally "untouched" and valid on its face.

Since the efficacy of 25-2137 was held inapplicable to the case, but its validity was upheld, the question remains that 25-2137 still applies to the specific facts of this case in that the State of Nebraska has sovereign and supreme jurisdiction to do a mortgage foreclosure under the powers reserved to it under the U.S. Constitution. Therefore, Appellant respectfully urges the Court to take this case.

Appellant verily believes that 28 U.S.C. § 157(b)(2) and part of *The Bankruptcy Amendments and Federal Judgeship Act of 1984* is simply not being construed, interpreted and applied according to this Court's mandate in *Northern Pipeline Construction Company v. Marathon Pipeline Company, supra.* This is why this case is before this Court.

If Appellant is relitigating a federal court's jurisdiction in a state court, as Appellee says, then the

Supreme Court of the United States is the forum to finally lay this issue to rest.

CONCLUSION

The Court should note probable jurisdiction. Appellee's Motion to Dismiss or Affirm should be denied. Noticeably, the substantial federal question sought to be reviewed was timely, properly, fairly and adequately presented and raised at all levels of the Court system in the State of Nebraska and was expressly passed upon. (Supreme Court Rule 16.1(b)). *People of State of New York ex rel. Bryant v. Zimmerman* (1928) 278 U.S. 63.

The case also qualifies for the provisions of 28 U.S.C. § 1257(3).

Respectfully submitted,

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